



6355-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 15-C0002]

Williams-Sonoma, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Williams-Sonoma, Inc., containing a civil penalty of \$700,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (INSERT DATE THAT IS 15 CALENDAR DAYS FROM PUBLICATION DATE).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 15-C0002 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Gregory M. Reyes, Trial Attorney, Office of the General Counsel, Division of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7220.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 29, 2014.

Todd A. Stevenson,

Secretary.

**UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:

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CPSC Docket No.: 15-C0002

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WILLIAMS-SONOMA, INC.

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### **SETTLEMENT AGREEMENT**

1. In accordance with the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2089 and 16 CFR 1118.20, Williams-Sonoma, Inc. (Williams-Sonoma), and the U.S. Consumer Product Safety Commission (Commission), through its staff (staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff’s charges set forth below.

### **THE PARTIES**

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Williams-Sonoma is a corporation, organized and existing under the laws of the state of Delaware, with its principal corporate office located at 3250 Van Ness Avenue, San Francisco, CA 94109.

4. Pottery Barn Kids (PBK), Pottery Barn, PBteen, and West Elm are brands, referred to by Williams-Sonoma as “merchandising concepts,” whose trademarks are owned by Williams-Sonoma.

### **STAFF CHARGES**

5. The subject matter of staff’s investigation concerned Roman shades sold by PBK (PBK Shades) that were voluntarily recalled by Williams-Sonoma on August 26, 2009 and

Roman shades that were sold by PBK, Pottery Barn, PBteen, and West Elm (collectively, the Roman Shades) that were voluntarily recalled by Williams-Sonoma on December 15, 2009.

6. Between January 2003 and November 2007, Williams-Sonoma imported, distributed in commerce, and sold to consumers approximately 85,000 of the PBK Shades with exposed inner cords through its PBK merchandising concept.

7. The PBK Shades are “consumer products,” and at all relevant times, Williams-Sonoma was a “manufacturer” and “retailer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8), (11), and (13) of the CPSA, 15 U.S.C. 2052(a)(5), (8), (11), and (13).

8. Staff charged that the PBK Shades recalled on August 26, 2009 are defective because the exposed inner cords on the PBK Shades pose a strangulation hazard to young children.

9. Between 2005 and 2007, Williams-Sonoma implemented three design changes to eliminate the hazard posed by the PBK Shades. By August 2007, Williams-Sonoma had approved its third and final design change that included a protective backing to cover the exposed inner cords of the PBK Shades.

10. By August 2007, Williams-Sonoma received five reports of children becoming entangled on the inner cords of the PBK Shades. In each of those five incident reports, the consumer raised a concern about the safety or design of the PBK Shades. By July 2008, Williams-Sonoma received two additional reports of children becoming entangled on the inner cords of the PBK Shades.

11. Between 2006 and 2008, Williams-Sonoma also settled claims with consumers who reported that their children had become entangled on the inner cords of the PBK Shades.

12. Williams-Sonoma filed its Full Report with the Commission for the PBK Shades on September 18, 2008.

13. CPSC staff alleges that Williams-Sonoma:

- a. had sufficient information by August 2007 that reasonably supported the conclusion that the PBK Shades contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death;
- b. was required, and failed, to inform the Commission immediately of the defect that could create a substantial product hazard, as required by section 15(b)(3) of the CPSA, 15 U.S.C. 2064(b)(3);
- c. was required, and failed, to inform the Commission immediately of the unreasonable risk of serious injury, as required by section 15(b)(4) of the CPSA, 15 U.S.C. 2064(b)(4);
- d. knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d); and sold a small quantity of recalled Roman Shades in violation of section 19(a)(2)(B) of the CPSA, 15 U.S.C. 2068(a)(2)(B).

14. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Williams-Sonoma is subject to civil penalties for its knowing failure to report as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

#### WILLIAMS-SONOMA’S RESPONSE

15. Williams-Sonoma neither admits nor denies the charges set forth above, including but not limited to, the charge that the Roman Shades contain a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, the

contention that Williams-Sonoma failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b), the contention that such failure was “knowing,” and the charge that Williams-Sonoma “knowingly” sold recalled products in violation of 19(a)(2)(B) of the CPSA.

16. Beginning in 2005, before Williams-Sonoma had received any reported incidents associated with the PBK Shades, Williams-Sonoma attempted to enhance the safety of the shades’ inner cords. The PBK and all Roman Shades that Williams-Sonoma sold at that time contained a generic inner cord design that was common in the industry.

17. None of the incidents that Williams-Sonoma has identified as associated with the PBK Shades reportedly resulted in a serious injury.

18. Williams-Sonoma stopped sourcing corded window coverings in 2009.

19. Williams-Sonoma took reasonable steps to prevent the inadvertent post-recall sale of recalled Roman Shades.

#### AGREEMENT OF THE PARTIES

20. Under the CPSA, the Commission has jurisdiction over the matter involving the PBK Shades and over Williams-Sonoma.

21. In settlement of staff’s charges and the subject matter of staff’s investigation, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Williams-Sonoma shall pay a civil penalty in the amount of seven hundred thousand dollars (\$700,000.00), which shall be due and payable within twenty (20) calendar days after receiving service of the Commission’s final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov>.

22. The parties agree that this settlement figure is predicated, among other things, upon the accuracy of oral and written representations of, and statements by, Williams-Sonoma and Williams-Sonoma's representatives made in connection with this matter.

23. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Williams-Sonoma or a determination by the Commission that Williams-Sonoma violated the CPSA.

24. Following staff's receipt of the Agreement executed on behalf of Williams-Sonoma, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 CFR 1118.20(e). If, within fifteen (15) calendar days, the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16<sup>th</sup>) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 CFR 1118.20(f).

25. The Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Williams-Sonoma, and (ii) the date of issuance of the final Order, the Agreement shall be in full force and effect and shall be binding upon the parties.

26. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Williams-Sonoma, and (ii) the date of issuance of the final Order, for good and valuable consideration, Williams-Sonoma hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the

following, in connection with the matter described in the Agreement: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether Williams-Sonoma failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

27. Paragraphs 21, 22, and 23 of the Settlement Agreement between Williams-Sonoma, Inc. and the U.S. Consumer Product Safety Commission, CPSC Docket No.: 13-C0005, 78 Federal Register 27,190 (May 9, 2013), which Williams-Sonoma has represented have been implemented, hereby are incorporated by reference into this Agreement as if fully set forth herein.

28. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

29. Williams-Sonoma represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Williams-Sonoma, and each of its successors and/or assigns, enforceable against Williams-Sonoma in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of Williams-Sonoma represent and warrant that they are duly authorized by Williams-Sonoma to execute the Agreement.

30. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute the Agreement.

31. The Agreement is governed by the laws of the United States.



32. The Agreement and the Order shall apply to, and be binding upon, Williams-Sonoma and each of its subsidiaries, successors, transferees, and assigns; and a violation of the Agreement or Order may subject Williams-Sonoma and each of its subsidiaries, successors, transferees, and assigns to appropriate legal action.

33. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained herein and therein.

34. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and therefore, the Agreement shall not be construed against any party for that reason in any subsequent dispute.

35. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

36. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Williams-Sonoma agree that severing the provision materially affects the purpose of the Agreement and Order.

WILLIAMS-SONOMA, INC.

Dated: October 14, 2014

By: \_\_\_\_\_  
Julie P. Whalen  
Executive Vice President, Chief Financial Officer  
Williams-Sonoma, Inc.  
3250 Van Ness Avenue  
San Francisco, CA 94109

Dated: October 15, 2014

By: \_\_\_\_\_  
Eric A. Rubel  
Arnold & Porter, LLP  
555 Twelfth Street, NW  
Washington, DC 20004-1206  
Counsel for Williams-Sonoma, Inc.

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION STAFF

Stephanie Tsacoumis  
General Counsel

Mary T. Boyle  
Deputy General Counsel

Mary B. Murphy  
Assistant General Counsel

Dated: October 16, 2014

By: \_\_\_\_\_  
Gregory M. Reyes  
Trial Attorney  
Division of Compliance

**UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:	)	
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	)	CPSC Docket No.: <u>15-C0002</u>
WILLIAMS-SONOMA, INC.	)	
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## **ORDER**

Upon consideration of the Settlement Agreement entered into between Williams-Sonoma, Inc. (Williams-Sonoma), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over Williams-Sonoma, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

**ORDERED** that the Settlement Agreement be, and is, hereby, accepted; and it is

**FURTHER ORDERED**, that Williams-Sonoma shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of \$700,000.00 within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Settlement Agreement. Upon failure of Williams-Sonoma to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Williams-Sonoma at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If Williams-Sonoma fails to make such a payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

(Continued on next page)

Provisionally accepted and provisional Order issued on the 29th day of October, 2014.

**BY ORDER OF THE COMMISSION:**

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Todd A. Stevenson, Secretary,

U.S. Consumer Product Safety Commission.

[FR Doc. 2014-26065 Filed 10/31/2014 at 8:45 am;  
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